

November 7, 2018

BY OVERNIGHT DELIVERY & E-MAIL

Office of General Counsel, Mail Code 2310A
Ms. Wendy Blake, Associate General Counsel
Mr. Scott Albright, Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Blake.Wendy@epa.gov
Albright.Scott@epa.gov

Re: Request for Voluntary Testimony in cases against Volkswagen
Group of America pending in Richmond, Virginia Circuit Court
April 8, 2019 – July 1, 2019

Dear Ms. Blake:

John Gayle, Mike Melkersen and I represent ten plaintiffs who have sued Volkswagen Group of America (“VWGoA”) and are set for trial in the Circuit Court in the City of Richmond, Virginia, April 8, 2019 – July 1, 2019, as follows:

Trial One – April 8-15, 2019:

Wayne Sawyer (Richmond/Fairfax CL-2016 -13115; 2013 Passat 2.0 TDI)

Wendy Amato (Augusta/Fairfax Case No. CL-2017-325; 2012 Jetta 2.0 TDI)

Trial Two – April 22-29, 2019:

Rebecca Royals (Henrico/Fairfax Case No. CL-2016-12902; 2010 Jetta 2.0 TDI)

Jane Schwalm (Augusta/Fairfax Case No. CL-2017-324; 2010 Jetta 2.0L, TDI)

Manfred Duggins (Richmond/Fairfax Case No. CL-2016-13118; 2011 Jetta 2.0 TDI)

Robert McDaniel (Richmond/Fairfax Case No. CL-2017-12933; 2011 Jetta 2.0 TDI)



Trial Three – June 10-17, 2019:

James and Megan Smith (Richmond/Fairfax Case No. CL-2016-13116; 2015 Passat 2.0)

Scott Carlton Ford (Richmond/Fairfax Case No. CL-2017-13248; 2014 Audi Q7 3.0 TDI)

Trial Four – June 24-July 1, 2019:

Bernard S. Via, III (Bristol/Fairfax Case No. CL-2016-15603; 2009 Jetta 2.0)

These cases are individuals who have opted out of the San Francisco class MDL and filed suit in various Virginia state courts, but, on VWGoA's motion, were transferred to the Circuit Court for Fairfax County where they have proceeded under the same Coordinated Pretrial proceeding. Judge White, the presiding Fairfax judge, has transferred the above cases to Richmond Circuit Court for trials on the dates referenced. We request that the EPA make a witness available to testify in person in each of the above cases in the Richmond trials as to EPA's involvement in the asserted fraud by VWGoA.

That would include testimony:

1. That VW submitted an application to the EPA for a certificate of conformity ("COC") with respect to its 2013 Beetle with the Turbo-charged Direct Injection diesel engine (the "Beetle"), and that in that application, VW was required, but failed, to disclose that the Beetle was equipped with a Defeat Device that was designed to deceive emissions testing facilities into believing that emissions that complied with the Clean Air Act were emitted, when in fact, the on-road emissions of the Beetle emitted nitrogen oxide ("NOx") levels some 10-40 times that allowable by law;
2. That based on the inaccurate emissions information submitted by VW relating to the 2013 Beetle, the so-called "SMOG" rating of "5" for that vehicle, which primarily concerns NOx levels, is inaccurate; and
3. That VW attempted to conceal its installation of the so-called Defeat Device in the manner as detailed in the complaint filed by the United States against VW in the Eastern District of Michigan, a copy of which is attached hereto.

We also request a certified copy of VW's application for a COC and any COC that issued from the EPA relating to the Beetle in accordance with FOIA.

Pursuant to 40 C.F.R. § 2.402(b), we believe that permitting the testimony would “clearly be in the interests of EPA” in that the litigation is consistent with actions brought by EPA, and could affect later EPA actions against VWGoA, which is denying liability in the Virginia state cases. As such, we ask that you permit the testimony and assist us in coordinating for their trial appearances. In that we are preparing pre-trial scheduling, we would appreciate your prompt response. Thank you for your assistance in this regard.

Sincerely,


Harris D. Butler, III

HB/tB

cc: Mr. Evan Belser (by e-mail Belser.Evan@epa.gov)
Chief, Vehicle and Engine Enforcement Branch, AED, OECA
Michael Melkersen, Esquire
John Gayle, Esquire